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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Argentina, Japan, Liechtenstein and Mexico: draft resolution

Protection of human rights and fundamental freedoms while countering terrorism

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the Universal Declaration of Human Rights,[1]

Reaffirming further the Vienna Declaration and Programme of Action,[2]

Reaffirming the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Reaffirming also that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Reaffirming further that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

Deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee and humanitarian law,

Stressing that a criminal justice system based on respect for human rights and the rule of law, including due process and fair trial guarantees, is one of the best means for effectively countering terrorism and ensuring accountability,

Recognizing that respect for all human rights, respect for democracy and respect for the rule of law are interrelated and mutually reinforcing,

[1] Resolution 217 A (III).
[2] A/CONF.157/24 (Part I), chap. III.

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Recalling its resolution 70/148 of 17 December 2015, Human Rights Council resolutions 33/21 of 30 September 2016[3] and 35/34 of 23 June 2017,[4] as well as other relevant resolutions and decisions, and welcoming the efforts of all relevant stakeholders to implement those resolutions,

Recalling also its resolution 70/291 of 1 July 2016 on the review of the United Nations Global Counter-Terrorism Strategy,[5] in which it called upon Member States and the United Nations entities involved in supporting counter-terrorism efforts to respect and continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals but are complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism,

Recalling further Human Rights Council resolution 31/3 of 23 March 2016,[6] by which the Council decided to extend the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Deeply deplores* the suffering caused by terrorism to the victims and their families, expresses its profound solidarity with them, and stresses the importance of providing them with assistance and other appropriate measures to protect, respect and promote their human rights;

3. *Expresses serious concern* at the occurrence of violations of human rights and fundamental freedoms, as well as violations of international refugee and international humanitarian law, committed in the context of countering terrorism;

4. *Reaffirms* the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[7] to respect certain rights as non-derogable under any circumstances, recalls, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, underlines the exceptional and temporary nature of any such derogations,[8] and in this regard calls upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism;

5. *Urges* States, while countering terrorism:

(a) To fully comply with their obligations under international law, in particular international human rights, refugee and humanitarian law, with regard to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

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[3] See *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53A* and corrigendum (A/71/53/Add.1 and A/71/53/Add.1/Corr.1), chap. II.

[4] Ibid., *Seventy-second Session, Supplement No. 53* (A/72/53), chap. V, sect. A.

[5] Resolution 60/288.

[6] See *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53* (A/71/53), chap. IV, sect. A.

[7] See resolution 2200 A (XXI), annex.

[8] See, for example, general comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001 (*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex VI).

(b) To take into full consideration the human rights of all, including persons belonging to national or ethnic, religious and linguistic minorities, and that measures taken to counter terrorism must not be discriminatory on grounds such as race, colour, sex, language, religion or social origin;

(c) To take all steps necessary to ensure that persons deprived of liberty, regardless of the place of arrest or detention, benefit from the guarantees to which they are entitled under international law, including the review of the detention and other fundamental judicial guarantees, such as ensuring that they are not left outside the protection of the law and that they are promptly brought before a judicial authority entitled to try them, within a reasonable time, or release them;

(d) To respect the right of persons to equality before the law, courts and tribunals and to a fair trial as provided for in international law, including international human rights law, such as the International Covenant on Civil and Political Rights, and international humanitarian and refugee law;

(e) To safeguard the work of civil society by ensuring that counter-terrorism laws and measures are consistent with and are applied in a manner that fully respects human rights, particularly the rights to freedom of expression, peaceful assembly and association;

(f) To safeguard the right to privacy in accordance with international law, in particular international human rights law, and to take measures to ensure that interferences with or restrictions on that right are not arbitrary, are adequately regulated by law, which must be publicly accessible, clear, precise, comprehensive and non-discriminatory, and are subject to effective oversight and appropriate redress, including through judicial review or other means;

(g) To review their procedures, practices and legislation regarding the surveillance and interception of communications and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law;

(h) To protect all human rights, including economic, social and cultural rights, bearing in mind that certain counter-terrorism measures may have an impact on the enjoyment of these rights;

(i) To ensure that guidelines and practices in all border control operations and other pre-entry mechanisms are clear and fully respect their obligations under international law, particularly international refugee and human rights law, towards persons seeking international protection;

(j) To fully respect non-refoulement obligations under international refugee and human rights law, which include to refrain from returning persons in cases where there are substantial grounds for believing that they would be in danger of subjection to torture, or where their lives or freedom would be threatened, and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;

(k) To ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law;

(l) Not to resort to profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including on racial, ethnic and/or religious grounds;

(m) To ensure that the interrogation methods used against terrorism suspects are consistent with their international obligations and are reviewed on a regular basis;

(n) To ensure that any person who alleges that his or her human rights or fundamental freedoms have been violated has access to a fair procedure for seeking full, effective and enforceable remedy within a reasonable time and that where such violations have been established, victims receive adequate, effective and prompt reparation;

(o) To ensure due process guarantees, consistent with all relevant provisions of the Universal Declaration of Human Rights,[1] and their obligations under the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949[9] and the Additional Protocols thereto of 1977,[10] and the 1951 Convention relating to the Status of Refugees[11] and the 1967 Protocol thereto[12] in their respective fields of applicability;

(p) To ensure that gender equality and non-discrimination are taken into account when shaping, reviewing and implementing all strategies to counter terrorism and violent extremism conducive to terrorism, and to promote the full and effective participation of women in those processes;

(q) To ensure that any measures taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights law and international humanitarian law, in particular the principles of distinction and proportionality;

(r) To take into account relevant United Nations resolutions and decisions on human rights, and to give due consideration to the recommendations of the special procedures and mechanisms of the Human Rights Council and to the relevant comments and views of United Nations human rights treaty bodies;

(s) To undertake prompt, independent and impartial fact-finding inquiries whenever there are plausible indications of possible breaches of their obligations under international human rights law, with a view to ensuring accountability;

6. *Also urges* States, while undertaking counter-terrorism activities, to respect their international obligations regarding humanitarian actors and to recognize the key role played by humanitarian organizations in areas where terrorist groups are active;

7. *Condemns* the recruitment and use of children, both in acts of terror and in the measures taken to counter terrorism, and calls upon States to end and prevent such recruitment and use, and take special measures to protect children pursuant to international human rights law and international humanitarian law;

8. *Recognizes* the importance of the International Convention for the Protection of All Persons from Enforced Disappearance,[13] the implementation of which will make a significant contribution in support of the rule of law in

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[9] United Nations, *Treaty Series*, vol. 75, Nos. 970–973.
[10] Ibid., vol. 1125, Nos. 17512 and 17513.
[11] Ibid., vol. 189, No. 2545.
[12] Ibid., vol. 606, No. 8791.
[13] Ibid., vol. 2716, No. 48088.

countering terrorism, including by prohibiting places of secret detention, and encourages all States that have not yet done so to consider signing, ratifying or acceding to the Convention;

9. *Urges* all States that have not yet done so to sign, ratify, accede to or implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[14] and encourages States to consider ratifying as a matter of priority the Optional Protocol thereto,[15] the implementation of which will make a significant contribution in support of the rule of law in countering terrorism;

10. *Recognizes* the important role of education, respect for cultural diversity, preventing and combating discrimination, and employment and inclusion in helping to prevent terrorism and violent extremism conducive to terrorism, and welcomes the engagement of relevant United Nations agencies with Member States to implement strategies to prevent violent extremism conducive to terrorism through education;

11. *Calls upon* the United Nations entities involved in supporting counter-terrorism efforts to respect and continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism;

12. *Encourages* the Office of Counter-Terrorism to enhance coordination and coherence across the entities of the Counter-Terrorism Implementation Task Force in supporting the efforts of Member States to ensure that their counter-terrorism measures are rooted in respect for their obligations under international human rights law and international refugee and humanitarian law;

13. *Urges* States, while ensuring full compliance with their international obligations, to ensure the rule of law and to include adequate human rights guarantees in their national procedures for the listing of individuals and entities with a view to combating terrorism;

14. *Requests* the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism to continue to make recommendations, in the context of his mandate, with regard to preventing, combating and redressing violations of human rights and fundamental freedoms in the context of countering terrorism, and to continue to report and engage in interactive dialogues on an annual basis with the General Assembly and the Human Rights Council in accordance with their programmes of work;

15. *Welcomes* the work of the United Nations High Commissioner for Human Rights to implement the mandate given to him by the General Assembly in its resolution 60/158 of 16 December 2005, and requests him to continue his efforts in this regard;

16. *Takes note with appreciation* of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism;[16]

17. *Also takes note with appreciation* of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which addresses, inter alia, human rights in the context of preventing and countering violent extremism;[17]

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[14] Ibid., vol. 1465, No. 24841.
[15] Ibid., vol. 2375, No. 24841.
[16] A/72/316.
[17] A/HRC/34/61.

18. *Requests* the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur to continue to contribute to the work of the Counter-Terrorism Implementation Task Force;

19. *Encourages* the Security Council and the Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism;

20. *Calls upon* States and other relevant actors, as appropriate, to continue to implement the United Nations Global Counter-Terrorism Strategy,[5] which, inter alia, reaffirms respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism;

21. *Requests* the Office of Counter-Terrorism to expand its efforts to ensure that the United Nations can better coordinate and enhance its support to Member States in their efforts to comply with their obligations under international law, including international human rights and refugee and humanitarian law, while countering terrorism, and encourages the Office to further incorporate a human rights perspective into its work;

22. *Encourages* relevant United Nations bodies and entities and international, regional and subregional organizations, in particular those participating in the Counter-Terrorism Implementation Task Force, to step up their efforts to ensure respect for international human rights and refugee and humanitarian law, as well as the rule of law, as an element of technical assistance, including in the adoption and implementation of legislative and other measures by States;

23. *Calls upon* international, regional and subregional organizations to strengthen information-sharing, coordination and cooperation in promoting the protection of human rights, fundamental freedoms and the rule of law while countering terrorism;

24. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the Human Rights Council and to the General Assembly at its seventy-fourth session.